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ABSTRACT

A variety of methods can be used to resolve environmental controversies, such as passing new laws, enforcing existing laws, conducting public education programs, and creating new governmental management agenceis. In many instances the courts become the site for environmental decision-making. The purpose of this activity is to help acquaint students with laws, lawsuits, and courtroom activity and their relationship to the solution of environmental questions. The students need to understand that the activity is a simulation--an abstraction of a real-world event. The procedures are basically the same as an actual court case but time periods, expertise required, formalities, etc., have been modified. The simulation is described in terms of a two-week period although the teacher may adjust the timing to suit classroom needs. General directions for the simulation, which concerns itself with a local resource controversy and its solution, are given together with specific directions for the various groups: advocate (plaintiffs and defendents), jury, community interest, media, and legal alternatives. The research and activities culminate with a simulated trial. Appended material includes fact sheets, sections from public laws, and suggested defenses. (BL)

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ENVIRONMENTAL ISSUES

A COURTROOM SIMULATION

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BLM thanks Robert MacLagan for the development of this simulation activity.

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Sample Study Unit - A Courtroom Simulation

Environment and Social Studies

A variety of methods can be used to resolve environmental controversies, such as passing new laws, enforcing existing laws, conducting public education programs, and creating new governmental management agencies. In many instance the courts become the site for environmental decision-making.

The purpose of this activity is to help acquaint students with laws, lawsuits, and courtroom activity and their relationship to the solution of environmental questions. The students need to understand that this is a simulation - an abstraction of a real-world event. The procedures are basically the same as an actual court case but time periods, expertise required, formalities, etc., have been modified.

This simulation is described in terms of a 2-week period. The teacher may adjust the timing to suit classroom needs.

I. General Directions for a Courtroom Simulation

The simulation concerns itself with a local resource controversy and its solution. The first step is to have the class decide on a local issue to be studied - such as building a dam, tree harvesting in a nearby forest, a proposed recreation development, or a pest control program. A problem that is of local importance will help maintain the students' interest and provide sources of information (newspapers, people actually involved, etc.).

The students should be divided into two groups, the plaintiff group and the defendant group. With larger classes, additional groups can be formed: a Community Interest Group which explores the opinions of community citizens affected by the controversy, a Media Group which acts as the news media covering the trial, and a Legal Alternatives Group which conducts research concerning other possible legal courses of action. A judge and a jury of 12 will be selected for the trial--these may be students in the class who agree to be impartial at the trial, or students or adults from outside the class.

The 2-week period of research and activities culminates with a simulated trial. At the trial, the Community Interest, Media, and Legal Alternatives Groups can also report their activities before the entire class. Since this final session will ordinarily take more than 2 hours, it might be possible to hold it in the evening and to invite parents to observe.

II. Specific Directions

A. The Advocate Groups

1. The Plaintiffs and the Defendants. The advocate group is subdivided into two parts - the plaintiffs and the defendants.

2. The "Facts" and The "Law". The basic "facts" and the "law" must be established before the simulation begins. The "facts" come from the specific community problem chosen for study. Once a fact situation is selected, those facts should be typed up on a "fact sheet" to serve as a starting point for the students' work. The fact sheet can be written up in story form as illustrated in Appendix A. The fact sheet should include the relevant facts and it may also include irrelevant facts so that the students will have to decide what is important and what is not. Certain facts should be left unstated or uncompleted. The students will then have to do additional research.

The rules of the "law" that can be used in an environmental lawsuit are many, but all spring from two basic sources - statutory law (passed by a legislative body) and common law (codified laws based on court decisions). Public Law #1 (Appendix B) is an example of a statutory law and the Nuisance Law (Appendix C) of common law. The plaintiffs and defendants should be limited to one or two laws in their work. Other possible legal remedies could be examined by the "Legal Alternatives Group." Copies of the relevant laws should be distributed along with the fact sheet.

As the students examine the relevant laws, they must determine what hurdles must be cleared in order to use them. The degree of guidance at this stage is up to the teacher. The five hurdles involved are:

a. Who may sue? ("standing")

Under the law in Appendix B anyone can bring suit whereas an individual may bring a nuisance action under Appendix C when it is "specially injurious to himself but not otherwise."

b. Who may be sued?

Appendix B lists who may be sued while the nuisance law does not.

c. What are the elements of proof?

For an action to stand using Appendix B the plaintiff must show:

(1) harm to the air, water or other natural resources

(2) causation by defendant.

For a nuisance action under Appendix C the plaintiff must show just what the law says.

The plaintiffs must prove three things - an act by the defendant that is a nuisance, actual harm, and causation between the defendant's act and the harm.

d. What remedy?

Appendix B allows the remedies of injunction (court order to stop) and abatement (court order to eliminate the source of the harm). Appendix C adds to these two remedies the remedy of damage (money compensation for past and future harm).

e. What defenses?

Appendix D lists two possible defenses for the hypothetical case described in the other three appendices.

f. Who has the "burden of proof"?

In the hypothetical case, the plaintiff has the burden of proving he has been harmed.

3. Initiation of the Lawsuit and Pretrial Preparations (Week 1). At this stage the students are like a lawyer with a prospective client in his office - he knows the facts and the law and he must determine if a "cause of action" arises from them. Do the laws protect the plaintiff from the defendant's activities? How is this determined? The lawyer, knowing the "hurdles" he must clear, determines if he has enough evidence to prove his case in court. For example, how will he prove the defendant's act is injurious to health and thus a nuisance? Using expert witnesses is one way. Expert witnesses can be members of the group who have done research on the problem or someone in the community whom the students have consulted.

As the plaintiffs clarify their thoughts and firm up their evidence they should take the first step in initiating a formal lawsuit - write up a "complaint" against the defendant. The legal purpose of a complaint is to serve notice on the court and on the defendant of the lawsuit. The plaintiff should file the complaint on Thursday or Friday of the first week.

The defendants should work during the first week on the same thing as the plaintiffs. The only difference, of course, is that they will be thinking in terms of their defense. Once the complaint has been "served" (delivered) on them, the defendants should respond by writing an "answer" to it in which they deny certain charges made and notify the plaintiffs of their separate defenses, such as those in Appendix D. The answer should be given to the plaintiff on the following Monday.

4. Pre-Trial Preparations (Week 2). During the second week the lawyers have many things to do. First, they can ask the opposing side to answer sets of written questions called "interrogatories." The purpose for this is to remove surprise elements from trials so that the true issues can be discussed. The plaintiffs and defendants should be given the opportunity to ask each other up to 20 questions during this second week. The questions are not to be a substitute for work on either side; thus the answering party should be allowed to object to any question they feel is unfair. The instructor should rule on these objections. No more than 2 days should be allowed for answering the interrogatories.

A second thing that each side should be doing during the second week is planning out what will be done at the trial - who will be called as witnesses, what questions will be asked of them, how all the necessary evidence will actually be presented. All of this work should be carefully planned out. By the end of the second week both sides should be prepared.

5. The Trial. The trial is divided into three main parts - the opening statement, the presentation of evidence, and the closing arguments. An outline and time sequence for the trial is presented below:

1. Plaintiff's opening statement. . . . . 3 minutes
2. Defendant's opening statement. . . . . 3 minutes
3. Plaintiff presents witnesses and evidence. . . . . .15 minutes
   (maximum of two witnesses at 5 minutes apiece.)
   - cross-examination (3 minutes per witness allowed) by the defendant. . . . . 6 minutes
4. Defendant presents witnesses and evidence. . . . . .15 minutes
   - cross-examination by plaintiff . . . . . 6 minutes
5. Plaintiff's arguments. . . . . .10 minutes
6. Defendant's arguments. . . . . .10 minutes
7. Plaintiff's rebuttal . . . . . 2 minutes
8. Report on community groups presented . . . . . .10 minutes
9. Report on public information presented . . . . . .10 minutes
10. Report on Legal Alternatives presented . . . . . .10 minutes
11. Jury deliberates, announces decision and reasons . . . . . .20 minutes

120 minutes

An opening statement is first made by the lawyer(s) representing the plaintiff and is very similar in form to the complaint. Its only purpose is to outline to the jury what the plaintiff will try to prove.

The lawyer(s) for the defendant follows, presenting an opening statement which outlines his strategy for showing that the plaintiff's charge is inappropriate.

Next, evidence is presented, the plaintiff's lawyer going first. In addition to the testimony of witnesses, interrogatories can be used as evidence by addressing the court and reading the desired question and answer. The defendant's lawyer follows.

The final stage of the trial is the argument stage. It is this stage where all the evidence presented is summarized for the jury's consideration. No new evidence can be used here. Each side must stand by the job they did in the evidence stage.

B. The Jury Group.

The jury can be parents, students or a mix of both. At the trial the jury should decide the case only from the evidence and arguments presented. They are free to take notes during the trial. At the conclusion of the trial the judge should remind the jury to base their decisions only on what they have seen and heard during the trial.

The jury will have 15 minutes to deliberate, debate and mull over what they have heard. Besides reaching a simple majority opinion, the majority and minority should write out reasons for their decisions.

C. The Community Interest Group.

The job of the community interest group is to seek out and talk to various interest groups in the community. These groups can be industry associations, special environmental interest clubs, neighborhood associations, local governmental agencies, etc. The students could find out whether each community group is interested in their ...ct situation and if so, just what action they would consider appropriate for this group to take.

Armed with this information, the students should evaluate the effectiveness of the proposed actions by the interest groups, examine the different resources each group has at its disposal, seek to determine if each group has taken into account all the possible factors, and so on.

The final product of the group's work could be a 10-minute report to be delivered at the time of the trial. The reports should answer the following three questions:

a. What groups are there in existence?

b. What is the position of each group on this problem?

c. What can they do about it?

D. The Media Group.

The job of the media group is to determine how the local press, TV and radio have involved themselves in environmental matters and what they have been doing about environmental questions. The students should also

attempt to research any media coverage of the controversy being studied. Students should also talk with reporters, commentators and others about their jobs and their involvement in environmental matters.

Near the end of the first week, when the complaint and the answer are filed, the group could prepare a brief press release about the trial for general distribution.

During the second week the media group may wish to issue further press releases about the problem, and perhaps set up a bulletin board with pictures and stories relevant to the issue.

The conclusions reached through this research can be presented in a 10-minute report at the time of the trial.

E. The Legal Alternatives Group.

1. The job of the Legal Alternatives Group is to explore possible legal remedies other than those chosen for the trial. Such remedies include:

a. Federal Laws.

b. State Laws.

c. Class Action Suits.

d. Stock Shareholder Suits.

Many of these alternatives are complex. The purpose of this study is not to seek to understand all the alternatives but to recognize they exist and perhaps some of the problems associated with their use.

2. This group could make a 10-minute report at the time of the trial.

III. Appendices.

Appendix A - Fact Sheet

Malcolm Jones is a milkman. He lives with his wife and two children, June, age 11 and Mark, age 7, in Yourtown, USA. He has lived in the same house for 14 years and, along with his neighbors, has seen many changes take place in the area.

One change was the construction of a convalescent home for older people about a mile and a half down the road from him. The convalescent home's presence allowed him to bring his sick mother to Yourtown about 7 years ago. Besides allowing Malcolm to provide better care for his mother, the climate of Yourtown was good for her asthma.

Another change was the construction of a nearby industrial plant. The Ajax Company built a $45 million plant right behind Malcolm's property. The plant has been in operation now for about 2 years. The plant sends a great volume of lime dust, coal dust and other chemical products into the air. These dusts coat everything they come into contact with, including Malcolm's house, property, equipment and family. The dust is fine and it is very difficult to wash off. The dust has also damaged Malcolm's hobby collection of prize-winning water lilies. The Ajax Company, which employs 350 local people and supplies a large percentage of local tax revenue, has recognized the problem and has on a number of occasions publicly expressed concern. It has stated that the problem is common to all similar plants and that no one has yet developed an economically feasible technology to reduce these exhausts.

Malcolm has considered moving his family and his mother, but is unable to sell his house except at a great financial loss.

Appendix B

Public Law #1

Sec. 2 "The Attorney General, any political subdivision of the State, any instrumentality or agency of the State or of a political subdivision thereof, any person, partnership, corporation, association, organization or other legal entity may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against the State, any polit al subdivision thereof, any inst entality or agency of the state or of a political subdivision thereof, any person, partnership, corporation, asso ation, organization or other legal entity for the protection of the air, water and other natural resources and the public trust therein from pollution, impairment or destruction."

Appendix C

Nuisance Law

Civil Code 731 Nuisance; action to abate; damages; parties authorized to sue; public nuisance.

"An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by a nuisance, as the same is defined in Sec. 3479 of CC and by the judgment in such action the nuisance may be enjoined or abated as well as damages recovered therefore. A civil action may be brought in the name of the people of the State to abate a public nuisance as the same is defined in Sec. 3480 of the CC by the DA of any county in which such nuisance exists..."

Civil Code 3479 Nuisance Defined

"Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway is a nuisance."

Appendix C Continued

Civil Code 3480 Public Nuisance

"A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal."

Civil Code 3493 Remedies; private person

"Remedies for Public Nuisance: a private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise."

Appendix D - Defenses

1. Balancing of Interests. Some courts allow this defense where the injury or potential injury to the plaintiff is balanced against the importance of the conduct being carried on by the defendant. Included in this defense is the aspect of what the defendant can feasibly do to reduce the harm.

2. Assumption of Risk. The defense is that the plaintiff should not be allowed to sue for damages arising out of a situation he was aware of and consented to being exposed to it.